



CENTRAL INTELLIGENCE AGENCY

WASHINGTON 25, D. C.

OFFICE OF THE DIRECTOR

The Honorable Joseph Campbell
Comptroller General of the United States
Washington, D. C.

Dear Mr. Campbell:

In the course of its operations, this Agency finds that it is expedient, economical and in the best interests of national security to enter into contractual agreements with individuals who agree to supply confidential information and services. One category of such individuals is paid a fee figured at an annual rate and is entitled only to such other emoluments as may be specified in the contract. The written agreement with such individuals specifically states in regard to the status of the individual that "you are not an employee of the United States Government under this agreement and are not entitled to any benefits normally incident to any employee status except as specifically enumerated herein". One of the individuals who has entered into such a contract with this Agency is a commissioned officer of the United States Army, retired on the basis of non-combat incurred disability and as such may not hold an office or position under the United States and continue to receive retired pay in such an amount as to make the total pay from both sources exceed the rate of \$3,000 per annum. For this reason, it is important to the Agency and to the officer to determine whether or not an individual entering into a contract to supply confidential information and services to this Agency holds an office or position under the United States within the meaning of Title 5, § 59a, United States Code which sets up the prohibition stated above.

It is the position of this Agency that individuals so contracting with the Agency are not employees of the United States Government but hold the status of independent contractors. They do not have the normal indicia of employees. The Agency does not exercise direct control over the individual in the performance of his work; it does not provide office space or tools and

SECRET

appliances; the individual has no set office hours, but carries out the work at such time as he considers expedient; he is not supervised in his employment but merely provides such information and services as requested and as he finds himself able to produce. Within the limits of security regulations, he utilizes other persons as he sees fit and these persons are not supervised by the Agency. The Agency is interested in and attempts to direct only the results of the contractor's services and except for important security considerations is disinterested in his means of performance. The fee payable to the contractor is calculated on a time basis rather than some other unit of measure. It is our view that the fact that he is paid in such a manner does not in itself operate to make him the holder of an office or position under the Government. He is providing information and related services; intangible items whose quality and quantity cannot be pre-determined and whose availability is subject to sudden and unpredictable change. For these reasons, he is paid a fee calculated at an annual rate much in the manner that a professional consultant may be paid a periodic retainer or fee measured by time served.

It is the opinion of the Agency that such contracts with individuals for the purchase of confidential information and related services are preferable to ordinary employment contracts. Through this device the government receives a necessary service at a reasonable cost while undertaking a minimum obligation to the contractor. Through the use of such contractors, the Agency is able to obtain a valuable service and at the same time avoid subjecting the United States Government to the manifold obligations of the employer-employee relationship. We feel that a person so contracting with the Agency fits one of the common definitions of an independent contractor, that is, "one who contracts to do a specific piece of work furnishing his own assistants, and executing the work in accordance with his own ideas, or a plan previously given to him by the person for whom work is done, without being subject to the orders of the latter with respect to the details of the work." 27 Am. Jur. 482.

Your views are requested on whether our opinion is correct that, based on the facts herein stated, the contractor with this Agency does not hold an office or position within the meaning of 5 U.S.C. § 59a (1946).

Sincerely,

Allen W. Dulles
Director